

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

7	ADAUTO REYNOSO,)	Case No. 09-3225 SC
8)	
9	Plaintiff,)	SUA SPONTE ORDER REMANDING
10)	ACTION FOR LACK OF SUBJECT
11	v.)	<u>MATTER JURISDICTION</u>
12)	
13	PAUL FINANCIAL, LLC, SAXON)	
14	MORTGAGE SERVICES, INC., QUALITY)	
15	LOAN SERVICE CORP., CITYMUTUAL)	
16	FINANCIAL, MORTGAGE ELECTRONIC)	
17	REGISTRATION SYSTEMS, INC., BANK)	
18	OF NEW YORK MELLON, KEVIN)	
19	CULLINANE, LISA CULLINANE, and)	
20	DOES 1 through 100,)	
21)	
22	Defendants.)	
23)	

I. INTRODUCTION

Plaintiff filed this action in Superior Court of the State of California for the County of San Mateo, alleging a total of twenty-four causes of action. See Notice of Removal ("NOR"), Docket No. 1, Ex. A ("Compl."). The Complaint included a number of federal causes of action, including alleged violations of the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), the Fair Debt Collection Practices Act ("FDCPA"), and the Racketeer Influenced and Corrupt Organizations Act ("RICO"). Id. Defendants thereafter removed this action to federal court, citing the federal questions raised by Plaintiff's federal causes of

1 action. NOR ¶ 7.

2 After removal, and in response to a number of motions to
3 dismiss filed by various Defendants, this Court dismissed large
4 portions of Plaintiff's Complaint, but granted Plaintiff leave to
5 amend. Docket No. 44. Plaintiff thereafter submitted his First
6 Amended Complaint ("FAC"). Docket No. 52. The FAC does not
7 include the many federal claims that were listed in the original
8 Complaint. Although the FAC makes several references to documents
9 that are related to TILA, Plaintiff does not base any particular
10 cause of action on the mandates of this or any other federal
11 provision. The Court notes that complete diversity between the
12 parties is lacking.

13
14 **II. LEGAL STANDARD**

15 District courts have original jurisdiction over cases that
16 arise under the Constitution, laws, or treaties of the United
17 States. 28 U.S.C. § 1331; See also U.S. Const. art. III, § 2,
18 cl.1. For a case to be removable as a federal question, it must be
19 a case that could have been brought in a district court because it
20 raises substantial federal questions under 28 U.S.C. § 1331.
21 However, "[i]f at any time before final judgment it appears that
22 the district court lacks subject matter jurisdiction, the case
23 shall be remanded." 28 U.S.C. § 1447(c).

24 When all federal causes of action have been dismissed and no
25 other basis for original jurisdiction exists, or when an amended
26 complaint does not present a federal question, the district court
27 has discretion to decline supplemental jurisdiction over the
28 remaining claims. See Id. §§ 1367(c), 1447(c); Cal. Dep't of Water

1 Res. v. Powerex Corp., 533 F.3d 1087, 1091 (9th Cir. 2008);
2 Albingia Versicherungs A.G. v. Schenker Int'l Inc., 344 F.3d 931,
3 938 (9th Cir. 2003). When deciding whether to retain jurisdiction
4 under these circumstances, a district court's discretion is
5 informed by considerations "of economy, convenience, fairness, and
6 comity." See Acri v. Varian Assocs., Inc., 114 F.3d 999, 1001 (9th
7 Cir. 1997) (en banc) (citing United Mine Workers of Am. v. Gibbs,
8 383 U.S. 715, 726-27 (1966)).

9 10 **III. DISCUSSION**

11 **A. The FAC Presents No Federal Question**

12 The first question is whether remand is permissible; i.e.,
13 whether this suit still involves a substantial federal question
14 over which this Court may assert original jurisdiction. Under the
15 well-pleaded complaint rule, "federal jurisdiction exists only when
16 a federal question is presented on the face of the plaintiff's
17 properly pleaded complaint." Caterpillar, Inc. v. Williams, 482
18 U.S. 386, 391 (1987). Because a plaintiff is "the master of the
19 complaint," he "may, by eschewing claims based on federal law,
20 choose to have the cause heard in state court." Id. at 398-99. It
21 appears that this is what occurred in this instance, as the FAC
22 does not include a single facial federal claim within its ten
23 causes of action, even though Plaintiff previously asserted claims
24 under various federal statutes.

25 An "independent corollary to the well-pleaded complaint rule"
26 is that "once an area of state law has been completely preempted,
27 any claim purportedly based on that preempted state law is
28 considered, from its inception, a federal claim, and therefore

1 arises under federal law." Id. at 392. Subject matter
2 jurisdiction may therefore still exist where a plaintiff has
3 "artfully pled" a federal claim as a state claim. "Artful pleading
4 exists where a plaintiff articulates an inherently federal claim in
5 state law terms." Brennan v. Southwest Airlines Co., 134 F.3d
6 1405, 1409 (9th Cir. 1998). Several of Plaintiff's causes of
7 action, such as his second cause of action for fraud, his ninth
8 cause of action for reformation, and his tenth cause of action for
9 breach of the broker's duty to disclose, could also be pled as
10 colorable federal claims. However, the fact that the federal
11 claims would have been closely related to the state claims does not
12 give a district court federal question jurisdiction when only state
13 claims are pursued. Instead, the "dispositive question" is whether
14 or not a federal statute provides the exclusive cause of action for
15 the claims at issue. Beneficial Nat'l Bank v. Anderson, 539 U.S.
16 1, 9 (2003). This Court, and numerous other courts, have
17 previously concluded that neither TILA nor RESPA completely preempt
18 state law claims of the type contained in the FAC. See, e.g.,
19 Bartolome v. Homefield Fin. Inc., No. 09-7258, 2009 U.S. Dist.
20 LEXIS 122148, *4-11 (C.D. Cal. Dec. 11, 2009); Montes v. HomeEq
21 Servicing, No. 09-5871, 2009 U.S. Dist. LEXIS 95402, *16 (C.D. Cal.
22 Sept. 29, 2009); U.S. N.A. v. Almanza, No. 09-0028, 2009 U.S. Dist.
23 LEXIS 6896, *5 n.1 (E.D. Cal. 2009); Fardella v. Downey S&L Ass'n,
24 No. 00-4393, 2001 U.S. Dist. LEXIS 6037, *6-7 (N.D. Cal. May 8,
25 2001). The Court finds no basis for concluding that Plaintiff has
26 "artfully pled" around any necessary federal claims.

27 A substantial federal question might also exist where "the
28 claim is necessarily federal in character, or where the right to

1 relief depends on the resolution of a substantial, disputed federal
2 question." Lippitt v. Raymond James Fin. Servs., Inc., 340 F.3d
3 1033, 1041-42 (9th Cir. 2003) (citations omitted). This may occur
4 where a substantial issue of federal law must be resolved to
5 address a plaintiff's state causes of action. Grable & Sons Metal
6 Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 313 (2005).
7 However, courts have typically resisted jurisdiction where
8 interpreting a federal law is not necessary to resolving a
9 plaintiff's claim, such as where a plaintiff's causes of action
10 rest on several alternative theories, some of which need not
11 implicate federal law in any way. See, e.g., Lippitt, 340 F.3d at
12 1042-43; Baker v. BDO Siedman, L.L.P., 390 F. Supp. 2d 919, 921
13 (N.D. Cal. 2005) (finding no jurisdiction where plaintiff could
14 recover under alternate and independent theory); see also Ortega v.
15 HomEq Servicing, No. 09-2130, 2010 U.S. Dist. LEXIS 4591, *16-18
16 (C.D. Cal. Jan 11, 2010) (collecting cases). This is the case in
17 the current dispute, as Plaintiff pleads numerous alternative
18 theories of recovery under each cause of action that could
19 potentially implicate a federal question.

20 The Court finds that none of Plaintiff's remaining claims
21 necessarily require resolution of questions of federal law.
22 Because either Plaintiff has dropped or "the district court has
23 dismissed all claims over which it has original jurisdiction," this
24 Court "may decline to exercise supplemental jurisdiction" over the
25 remaining claims. See 28 U.S.C. § 1367(c).

26 **B. Whether Continued Jurisdiction Is Appropriate**

27 Having concluded that this case no longer presents any
28 substantial federal questions to anchor jurisdiction in this Court,

1 the Court must next consider whether the factors "of economy,
2 convenience, fairness, and comity" warrant remand or the continued
3 exercise of supplemental jurisdiction. See Acri, 114 F.3d at 1001.
4 "[I]n the usual case in which all federal-law claims are eliminated
5 before trial, the balance of [these] factors . . . will point
6 toward declining to exercise jurisdiction over the remaining state-
7 law claims." Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350
8 n.7. (1988).

9 In this instance, the interests of convenience and fairness
10 weigh neither for nor against remand. The Superior Court in San
11 Mateo is not remote from this Court, and both courts are at least
12 competent to address the legal issues involved in this dispute.
13 See Bader v. Elecs. for Imaging, Inc., 195 F.R.D. 659, 662 (N.D.
14 Cal. 2000) ("[W]hile a change from federal to state court might
15 create a tactical disadvantage to defendants, that is not legal
16 prejudice.").

17 The consideration of comity, however, weighs strongly in favor
18 of remand. "Needless decisions of state law should be avoided both
19 as a matter of comity and to promote justice between the parties,
20 by procuring for them a surer-footed reading of applicable law."
21 Gibbs, 383 U.S. at 726. Where there are no remaining federal
22 issues of jurisdictional import, the state's interest in resolving
23 disputes over its own law is a compelling incentive to remand.
24 This is especially true where, as here, Plaintiff's allegations are
25 entangled in various issues of statutory law, including the
26 capacity of certain defendants to do business in the state, the
27 scope and applicability of statutory provisions related to
28 contracts in multilingual transactions, and the statutory scheme

1 surrounding California's non-judicial foreclosure proceedings.
2 Each of Plaintiff's claims are best adjudicated by a California
3 court, and this Court risks overstepping by retaining jurisdiction
4 of a case in which the federal interest is now minimal.

5 The issue of economy cuts both ways. On the one hand,
6 Defendants currently have two motions to dismiss that are fully
7 briefed, as well as a third motion to dismiss that has been filed
8 and opposed. Remand would surely delay resolution of these
9 motions. In addition, this Court has already addressed an early
10 round of motions to dismiss, and is therefore acquainted with the
11 original allegations.

12 On the other hand, this suit remains in its nascent stages.
13 Although judicial resources have been spent resolving the first
14 round of motions to dismiss, the result was the dismissal of
15 superfluous and overreaching causes of action. Any benefit from
16 this expenditure of resources will not be lost on remand.
17 Moreover, in light of the fact that Plaintiff has substantially
18 overhauled his allegations in the FAC, the legal analysis of most
19 of Plaintiff's claims will now need to begin at square one,
20 regardless of the forum. The resources of the parties will also
21 not be unreasonably taxed upon remand, as the parties should be
22 able to simply refile their pending motions without a substantial
23 increase in costs. Having concluded that this matter is now best
24 suited for resolution in state court, this Court is hesitant to
25 expend any additional resources on these motions, or play any
26 greater role in shaping the dispute as it moves into its next
27 stages. The interest of economy therefore weighs in favor of
28 remand.

1 This Court finds that the interests of comity and judicial
2 economy support remand of this suit to the Superior Court of San
3 Mateo County. The Court therefore declines to exercise continued
4 supplemental jurisdiction over this matter.

5
6 **IV. CONCLUSION**

7 This Court finds that the First Amended Complaint lacks any
8 substantial question of federal law, and that this dispute now
9 involves only state law issues. Having considered the interests of
10 economy, convenience, fairness, and comity, this Court concludes
11 that an exercise supplemental jurisdiction would be imprudent, and
12 that remand is appropriate. All pending motions are DENIED WITHOUT
13 PREJUDICE for this reason. This action is to be REMANDED to the
14 Superior Court of California, in and for the County of San Mateo.

15
16 IT IS SO ORDERED.

17
18 Dated: March 9, 2010

19 
UNITED STATES DISTRICT JUDGE